NPDES PERMIT NO. NM0030112
STATEMENT OF BASIS

FOR THE DRAFT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT TO DISCHARGE TO WATERS OF THE UNITED STATES

I. APPLICANTS

State of New Mexico Department of Game and Fish,
Seven Springs State Trout Hatchery
P.O. Box 25112
Santa Fe, NM 87504

II. ISSUING OFFICE

U.S. Environmental Protection Agency
Region 6
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III. PREPARED BY

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IV. DATE PREPARED

August 2, 2007

V. PERMIT ACTION

Proposed reissuance of the current National Pollutant Discharge Elimination System (NPDES) permit issued December 20, 2004, with an effective date of February 1, 2005, and an expiration date of July 31, 2007.

Unless otherwise stated, citations to 40 CFR refer to promulgated regulations listed in Title 40, Code of Federal Regulations, revised as of June 8, 2007.

VI. CHANGES FROM PREVIOUS PERMIT

The change(s) from the current permit issued December 20, 2004, with an effective date of February 1, 2004, and an expiration date of July 31, 2007 are:

a. "Report" requirements for temperature and ammonia are being eliminated.

b. Solid waste requirements are being eliminated from the permit.

c. The whole effluent toxicity testing critical dilution has been increased to 100%.

VII. APPLICANT ACTIVITY

Under the Standard Industrial Classification (SIC) Code 0921, the applicant operates a fish hatchery.

The facility described in the application produces a maximum harvestable weight of 24,500 pounds of Rio Grande cutthroat trout per year, with an average harvestable weight of 5,000 pounds, from 3 ponds, 2 raceways, 12 tanks and 34 troughs.

Intake water for the hatchery comes from Cebolla Spring, Seven Springs, Calaveras Spring and Cold Water Spring. The water is routed through brood stock, hatchery and grow-out buildings prior to discharge.

During normal operations, dispersed solids consisting of uneaten food, fish wastes and other sediment are discharged as part of the normal wastewater. This normal wastewater is discharged into "Kids Fishing Pond". Outfall 001 is the discharge into "Kids Fishing Pond". When the various tanks and raceways are cleaned of sediment on a weekly basis, this sediment laden wastewater is sent through a separate piping system to the "Settling Pond." Outfall 002 is the discharge from "Settling Pond" to the Rio Cebolla. Intermittently, some of the wastewater that is in the "Kids Fishing Pond" flows to an area called the "wetlands", which then flows to a neighbors pasture. Since the discharge that enters "Kids Fishing Pond" is through Outfall 001, the flow from "Kids Fishing Pond" is not limited by an outfall.

In accordance with the Implementation Guidance for the State of New Mexico Standards for Interstate and Intrastate Streams, (IG), the flow to be used for establishing limits is the highest monthly average flow discharged from the facility over the past 24-months. For Outfall 001, this flow is 0.913 MGD and Outfall 002 is 0.228 MGD. These flows will be used to establish loading limits and determining critical dilutions in the permit.

VIII. DISCHARGE LOCATION

As described in the application, the site is located on State Highway 126, approximately 2 miles North of Fenton Lake in Sandoval County, NM. The discharge from the facility is through Outfall 001 which is located at Latitude 35° 55' 31.84" North, Longitude 106° 47' 5.93" West, and Outfall 002 located at Latitude 35° 55' 35.5" North, Longitude 106° 47' 13.0" West.

IX. RECEIVING STREAM STANDARDS

The general and specific stream standards are provided in "New Mexico State Standards for Interstate and Intrastate Surface Waters" (20.6.4 NMAC, amended through December 29, 2006).

The effluent from the facility is discharged to the Rio Cebolla; thence to the Jemez River; thence to the Rio Grande in Segment No. 20.6.4.108 of the Rio Grande Basin in Sandoval County, NM. The Rio Cebolla has the following designated uses: domestic water supply, high quality coldwater aquatic life, fish culture, irrigation, livestock watering, wildlife habitat and secondary contact.

X. EFFLUENT CHARACTERISTICS

The effluent from the facility has been monitored under the conditions of the current permit with a February 1, 2005, effective date. The following is a summarization of the discharge monitoring reports (DMR) between April 2005 and April 2007.

Parameter	avg (mg/l unless noted)	max
<u>OUTFALL 001</u>		
Temperature	50 °F	57 °F
pH	7.1 su	7.6 su
Total Suspended Solids (TSS)	3.2	19
Settleable Solids (SS)	0.1 ml/l	0.5 ml/l
Flow	0.447 MGD	0.913 MGD
Ammonia (NH3)	0.1	0.1
<u>OUTFALL 002</u>		
Temperature	52 °F	63 °F
pH	7.6 su	8.1 su
Total Suspended Solids (TSS)	3.3	11
Settleable Solids (SS)	0.1 ml/l	0.5 ml/l
Flow	0.149 MGD	0.228 MGD
Ammonia (NH3)	0.1	0.1

Additionally, both outfalls were tested for metals, cyanide, dioxin, radium, tritium, gross alpha, beta, boron, cobalt, uranium, vanadium nitrite, nitrate, volatile compounds, acid compounds, base neutral compounds and pesticides described in 20.6.4.J, NMAC, as part of additional pollutant requirements for its application. The only pollutants detected above minimum quantification levels (MQL), or pollutants that do not have MQL's are:

	<u>Outfall 001</u>	<u>Outfall 002</u>
Nickel	0.08 mg/l	0.07 mg/l
Zinc	0.07 mg/l	0.03 mg/l

Vanadium	0.13 mg/l	0.12 mg/l
Nitrite	0.83 mg/l	<0.01 mg/l
Nitrate	1.0 mg/l	<0.01 mg/l

Retesting by the applicant of both the source water and the effluent from Outfall 001 for the parameters vanadium and nickel was conducted during July 2007, and the results for those pollutants were non-detect for both pollutants from both the source water and the effluent.

XI. DRAFT PERMIT RATIONALE AND PROPOSED PERMIT CONDITIONS

The proposed effluent limitations for those pollutants proposed to be limited are based on regulations promulgated at [40 CFR 122.44]. The draft permit limits are based on either technology-based effluent limits pursuant to [40 CFR 122.44(a)], on BPJ in the absence of guidelines, NM WQS and/or requirements pursuant to [40 CFR 122.44(d)], whichever are more stringent.

A. Reason for Permit Issuance

It is proposed that the permit be issued for a 5-year term following regulations promulgated at [40 CFR 122.46(a)]. The proposed permit expiration date will coordinate with the EPA Basin Statewide Management Approach to Permitting in New Mexico, adopted March 2, 2000. This program also known as the Statewide Basin Management Approach to permitting is a comprehensive framework to better coordinate and integrate water resource management activities geographically by river basin.

The permit application was received on January 18, 2007. The application was determined to be administratively complete February 23, 2007.

B. Operation And Reporting

The permittee must submit discharge monitoring reports (DMR's) quarterly, beginning on the effective date of the permit, lasting through the expiration date of the permit, to report on all limitations and monitoring requirements in the permit.

C. Technology-Based Effluent Limitations/Conditions

Regulations promulgated at [40 CFR 122.44(a)] require technology-based effluent limitations to be placed in NPDES permits based on effluent limitations guidelines where applicable, on BPJ (best professional judgment) in the absence of guidelines, or on a combination of the two.

Technology-based effluent limitations found at [40 CFR 451] have been promulgated for this type of activity. Regulations for best practicable control technology currently available (BPT), apply for discharge of pollutants from a concentrated aquatic animal production facility that produces 100,000 pounds or more per year of aquatic animals in a flow-through system. The facility produces approximately 24,500 pounds annually. The production is under the minimum

production requiring best management practices (BMP) relating to solids control, materials storage, structural maintenance, recordkeeping and training.

The previous permit however, predated 40 CFR 451, and established technology-based limitations for total suspended solids (TSS) and settleable solids (SS) in accordance with 40 CFR 122.44(l)(2)(ii). Limitations for TSS were established at 10 mg/l daily avg., 15 mg/l daily max. Limitations for SS were established at 0.1 milliliter/liter (ml/l) daily avg., 0.5 ml/l daily max. These limitations will be retained in the draft permit for both outfalls.

Mass loading limits shall be established for TSS in the draft permit for Outfall 001. Effluent flow of 0.913 MGD, conversion factor of 8.345 lbs/gallon, and daily maximum concentrations of 15 mg/l, monthly average concentration of 10 mg/l, yields mass loadings of:

Daily maximum: 0.913 X 8.345 X 15 = 114 lbs
Monthly average: 0.913 X 8.345 X 10 = 76 lbs

Mass loading limits are not established in the draft permit for Outfall 002, since the flow is not continuous. The technology-based limitations are based on concentration limits and these will be protective. This is in accordance with [40 CFR 122.45(f)(1)(iii)], where mass limits are infeasible because the discharge cannot be related to a measure of operation. Mass loading shall be a "Report" in the draft permit.

Monitoring frequency for TSS and SS, for both outfalls will be identical to the current permit, twice/month, using grab samples.

D. Best Management Practices

Best Management Practices (BMP's) are narrative conditions that can aid in achieving permit compliance in addition to chemical specific limits. Regulations at [40 CFR 122.44] state that in addition to conditions established under [40 CFR 122.43(a)], each NPDES permit shall include conditions meeting the following requirements when applicable. The authority for BMP's are found at [40 CFR 122.44(k)(4)] which state that BMP's "…are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA."

The current permit had a provision for the facility to prepare and present for approval a best management practices plan (BMP), and to implement the plan. Seven Springs State Trout Hatchery submitted a BMP plan to EPA April 22, 2002 and was also provided as part of the NPDES application package. The plan as presented is incorporated into this draft permit.

The plan shall be updated as needed, and located at the hatchery. The BMP plan shall be made available to staff from either EPA and/or NMED upon request.

E. Technology-Based Versus Water Quality Standards-Based Effluent Limitations and Conditions

Following regulations promulgated at [40 CFR 122.44], the draft permit limits are based on either technology-based effluent limits pursuant to [40 CFR 122.44(a)] or on State WQS and requirements pursuant to [40 CFR 122.44(d)], whichever are more stringent.

F. Water Quality Based Limitations

1. General Comments

Effluent limitations and/or conditions established in the draft permit are in compliance with State water quality standards and the applicable water quality management plan.

2. Water Quality Standards

The NM WQCC adopted new WQS for the State of New Mexico. The revised WQS as amended through December 29, 2006, are available on the NMED's website at: http://www.nmenv.state.nm.us/. The WQCC established the revised WQS in accordance with, and under authority of, the NM Water Quality Act [Chapter 74, Article 6, NMSA 1978 Annotated].

3. Toxics

The Clean Water Act in Section 301 (b) requires that effluent limitations for point sources include any limitations necessary to meet water quality standards. Federal regulations found at [40 CFR 122.44 (d)] state that if a discharge poses the reasonable potential to cause an in-stream excursion above a water quality criterion, the permit must contain an effluent limit for that pollutant. The pollutant concentrations contained in the permit application shown above in Section X, Effluent Characteristics, were measured against State numeric water quality standards, and these are shown in the attached spreadsheet.

Outfall 001 discharges to “Kids Fish Pond” and the WQS were evaluated using a lake model, which evaluates the discharge as end-of-pipe, and does not allow any dilution. Based on the attached spreadsheet, vanadium and nickel demonstrate a reasonable potential to exceed State WQS. After the reasonable potential testing indicated that vanadium and nickel were at levels that exceeded WQS, the applicant retested both the spring water supply and the effluent. The results of this testing conducted during July, 2007, resulted in non-detects for both pollutants at both the source water and the effluent. The July, 2007, testing showed that the facility did not add pollutant concentrations to the source water, and the source water, a naturally flowing stream, would exist even if the facility did not. The permit writer believes that it is appropriate to consider the source water the same way as an intake credit, and since the hatchery activities do not contribute to the pollutant load, these two pollutants do not need to be limited in the draft permit.

Outfall 002 discharges directly to the Rio Cebolla, and the 4Q3 used in the previous permit, 2.46 cfs was used to evaluate the discharge. The attached spreadsheet shows that none of the tested pollutants demonstrate a reasonable potential to exceed State WQS, and no further permit requirements are required in the draft permit.

4. Segment Specific Water Quality-Based Limits

Regulations promulgated at [40 CFR 122.44(d)] require limits in addition to or more stringent than effluent limitation guidelines (technology based).

Segment specific standards for 20.6.4.108 require pH to be between 6.6 – 8.8 su's, consistent with the previous permit.

The previous permit had "Report" requirements for temperature. The stream segment specific temperature limitation is 69° F or less. Based on DMR data, the discharge has been consistently below 68° F. The facility does not have any activities that cause heat to be added to the flow, no cooling of industrial motors, pumps or chillers. Temperature does not exhibit a potential to exceed WQS. Therefore, temperature "Report" requirements are proposed to be eliminated from the draft permit.

Additionally, the previous permit had ammonia as a "Report" requirement for both outfalls. Analysis of that pollutant shows discharges of less than 0.1 mg/l at end-of-pipe, and is not at sufficient concentrations to be a concern. Ammonia report requirements are proposed to be eliminated in the draft permit for both outfalls.

5. Whole Effluent Toxicity Limitations

a. GENERAL COMMENTS

The State has established narrative criteria, which in part state that:

"...surface waters of the state shall be free of toxic pollutants from other than natural causes in amounts, concentrations or combinations that affect the propagation of fish or that are toxic to humans, livestock or other animals, fish or other aquatic organisms, wildlife using aquatic environments for habitation or aquatic organisms for food, or that will or can reasonably be expected to bioaccumulate in tissues of fish, shellfish and other aquatic organisms to levels that will impair the health of aquatic organisms or wildlife or result in unacceptable tastes, odors or health risks to human consumers of aquatic organisms...." (NM WQS Section 20.6.4.13.F.)

b. ROUTINE OPERATIONS - OUTFALL 001

In a letter from Marcy Leavitt, NMED, to Claudia Hosch, EPA, December 16, 2005, NMED provided Narrative Toxics Implementation Guidance – Whole Effluent Toxicity, (NTIG-WET), an update to the 1995 Implementation Guidance. Since the designated use of stream segment 20.6.4.108 is coldwater aquatic life, the NTIG-WET plan requires a biomonitoring test.

The discharge from the hatchery is primarily from Outfall 001, and Outfall 002 is used when the water from the cleaning operations that are sent to the "Settling Pond" exceed the volume of that pond. The nature of the pollutants as far as toxics are concerned is identical with the exception of sediments and toxicity shall be monitored only at Outfall 001.

The previous permit established the critical dilution at 48%, based on the effluent flow relative to the Rio Cebolla. In the draft permit however, this critical dilution shall be changed to reflect the discharge into the "Fishing Pond". The State does not allow dilution for discharges into ponds, lakes and/or playas. Based on this, the critical dilution for Outfall 001 shall be increased to 100%. The NTIG-WET plan for fish hatcheries normally establishes a once per permit term test frequency, but the facility has had a toxicity failure for Pimephales promelas in March 2004, and the draft permit will establish a yearly monitoring frequency.

The effluent concentrations using a 75% dilution series are 32%, 42%, 56%, 75% and 100%. The test species will be the Ceriodaphnia dubia and Pimephales promelas (fathead minnow). The test frequency will be once year, with the test to occur between November 1 and April 30.

EFFLUENT CHARACTERISTIC	**DISCHARGE MONITORING**	
WHOLE EFFLUENT TOXICITY TESTING (7 Day Static Renewal) (*1)	**30-DAY AVG. MINIMUM**	**7-DAY MINIMUM**
Ceriodaphnia dubia	Report	Report
Pimephales promelas	Report	Report

EFFLUENT CHARACTERISTIC	**MONITORING REQUIREMENTS**	
WHOLE EFFLUENT TOXICITY TESTING (7 Day Static Renewal) (*1)	**FREQUENCY**	**TYPE**
Ceriodaphnia dubia	Annual (*2)	24-Hr Composite
Pimephales promelas	Annual (*2)	24-Hr Composite

FOOTNOTES:

*1 Monitoring and reporting requirements begin on the effective date of this permit. See Part II, Whole Effluent Toxicity Testing Requirements for additional WET monitoring and reporting conditions.

*2 The discharge shall be tested between November 1 and April 30 following the permit effective date.

c. APPROVED MEDICATIONS AND HATCHERY PRACTICES

i. DRUGS MEDICATIONS AND/OR CHEMICALS, NOT CHLORINE

At times, Department of Game & Fish (DGF) hatchery staff administers drugs medications and/or chemicals (DMC) used for aquaculture purposes in the water system, in a manner and/or amount that will allow it to be discharged to waters of the United States. The US Food and Drug Administration (FDA) approve some of these DMC and/or amounts of use. Some times, however, either the DMC are used for purposes not specifically approved by the FDA, or the DMC are not approved at all by the FDA, but their use is consistent with sound hatchery practices. With the exception of chlorine, anytime DMC, at either concentrations and/or uses not approved by the FDA, are used either in amounts or a manner that it would allow it to enter the receiving stream; the DGF shall notify both EPA and NMED of its impending use. Notification

to NMED shall be by phone within one business day of its decision to use the DMC, and to EPA within three days. Written notification shall also be to both EPA and NMED, in writing no less than five-business days later. Both notifications shall provide the name of the DMC, its amount, concentration of use and reason for its use, along with the expected date and time of its use, and expected duration of use.

When the DMC used is either not approved by the FDA or its use is not consistent with FDA practices, such that it would allow it to enter the receiving stream, DGF shall conduct the following Whole Effluent Toxicity Test, per instance of use (See footnote *1 below). The test shall be a 48-Hr Static Renewal test, with a 100% critical dilution. This testing shall be reported on discharge monitoring report (DMR) and reported as Outfall 01B. On the DMR, report in the comment section the date, time, duration and the name of the DMC used. Also note the date of the letter DGF sent to EPA and NMED.

EFFLUENT CHARACTERISTIC	DISCHARGE MONITORING 30-DAY AVG MINIMUM	48-Hr. MINIMUM
Whole Effluent Toxicity Testing (48 Hr. Static Renewal) (*1) Pimephales promelas	REPORT	REPORT

EFFLUENT CHARACTERISTIC	MONITORING REQUIREMENTS FREQUENCY	TYPE
Whole Effluent Toxicity Testing (48 Hr. Static Renewal) (*1) Pimephales promelas	1/Use (*2, 3)	Grab

*1 Acute freshwater Whole Effluent Toxicity Testing
*2 WET testing shall be conducted on the maximum dose of each instance of intermittent use of drugs, medications and/or chemicals not approved by the FDA, or drugs, medications and/or chemicals for purposes other than those for which FDA approval was granted (not including chlorine). For long-term use of these drugs, medications and/or chemicals, only one WET test shall be required on the maximum dose of the treatment, unless that maximum dose is later increased by 20 percent. At that point, and any later increases above 20 percent, then additional WET tests will be required.
*3 The sample shall occur at the outfall location consistent with the unit being treated, during the time that the expected highest dose is being administered and shall be taken at a time taking into consideration the lag-time for the slug of maximum dosage of DMC to flow from the point of application to the sample point. The grab sample for the WET test shall be taken 30-minutes after the expected arrival time of the first slug of DMC at the outfall. The expected arrival time can be determined by direct observation by use of a floatable marker such as wooden blocks.

ii. CHLORINE USE

During times when chlorine is used in the treatment process, for cleaning of the aquatic production system, and/or to eliminate parasites, DGF shall notify the Agency and the NMED. Notification to NMED shall be by phone within one business day of its decision to use the DMC, and at least three-business days prior to the actual use, and both EPA and NMED, in writing, within five-business days of its decision of use. The notification should give the expected date and time of its use and the expected duration of usage. This test shall be reported on the DMR as Outfall 01B. Total residual chlorine (TRC) shall be limited in the permit to a maximum 11 ug/l end-of-pipe. This test will be in place of the WET test described above for other DMC. Testing for TRC shall be an instantaneous grab sample, with analysis performed within 15-minutes of

sample collection. During ALL times when chlorine is being used, DGF shall monitor and report TRC daily. In addition, TRC shall be measured and reported for one day after the last use of the chlorine. On the DMR report in the comment section the date, time and duration of the chlorine use shall be noted. Also note the date of the letter that was sent to EPA and NMED. The first day of use, TRC shall be sampled approximately 30-minutes after the expected slug of water has passed through the outfall. The expected time of arrival can be determined by direct observation by the use of a floatable marker such as wooden blocks.

G. Solid Waste Practices

The previous permit included provisions for solid waste disposal that referenced regulations contained in [40 CFR 257]. That citation was not appropriate for an NPDES permit however, as those regulations are beyond those of the Clean Water Act. The draft permit will remove the requirements for solid waste disposal.

XIII. 303(d) LIST

Limitations or monitoring requirements on toxic pollutants are based on 20.6.4 NMAC Section 20.6.4.900. The Rio Cebolla, Segment No. 20.6.4.108, from the inflow to Fenton Lake to the headwaters, previously had a TMDL developed for stream bottom deposits and temperature. EPA approved this TMDL on June 3, 2003. This watershed includes the Upper Rio Cebolla, the stream portion that includes the Seven Springs Fish Hatchery.

The TMDL indicated that sampling results at Station 16, (at the hatchery), showed that markers (e.g. nitrate, total ammonia, total organic carbon, Kjeldahl nitrogen, etc.), for the (hatchery effluent discharge) were not found to be elevated in the Rio Cebolla. The sampling crew noted that the substrate at this station was comprised largely of fines and gravels, probably originating from washed out dams some miles upstream on U.S. Forest Service property (SWQB/NMED, 2001), which is not associated with the hatchery discharge. Additionally, for temperature, both stream temperature and flow vary seasonally and from year to year. Water temperatures are coolest in winter and early spring months. Thermograph records show that temperatures may exceed State water quality standards in summer and in the case of the stream segments being focused on in the Jemez River Basin, early fall. Warmest stream temperatures corresponded to prolonged solar radiation exposure, warm air temperature and low flow conditions. These conditions occur during late summer and early fall and promote the warmest seasonal instream temperatures.

The TMDL did not establish any point source load obligations to the hatchery, and no additional permit requirements are needed for these parameters. The previous permit established “Report” requirements for both temperature and ammonia based on potential concerns, but the this draft permit previously proposes to eliminate those requirements since no reasonable potential exists to impact State WQS. A standard reopener clause is established in the permit that would allow additional conditions if a TMDL is revised, and/or new water quality standards established.

XIV. ANTIDEGRADATION

The NMAC, Section 20.6.4.8 "Antidegradation Policy and Implementation Plan" sets forth the requirements to protect designated uses through implementation of the State water quality standards. The limitations and monitoring requirements set forth in the proposed permit are developed from the State water quality standards and are protective of those designated uses. Furthermore, the policy sets forth the intent to protect the existing quality of those waters, whose quality exceeds their designated use. The permit requirements and the limits are protective of the assimilative capacity of the receiving waters, which is protective of the designated uses of that water, NMAC Section 20.6.4.8.A.2.

XV. ANTIBACKSLIDING

The proposed permit is consistent with the requirements to meet antibacksliding provisions of the Clean Water Act, Section 402(o) and [40 CFR 122.44(l)(i)(A)], which state in part that interim or final effluent limitations must be as stringent as those in the previous permit, unless material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation. The proposed permit has lower mass loading requirements than the previous permit for SS and TSS due to a decrease in permitted flow rate. The permit has eliminated "Report" requirements, but these were not limits, and where included in the previous permit to determine if limits were needed to be included in this draft permit, and are not subject to antibacksliding provisions. All of the changes represent permit requirements that are consistent with the WQS and with WQMP.

XVI. ENDANGERED SPECIES CONSIDERATIONS

According to the most recent county listing available at US Fish and Wildlife Service (USFWS), Southwest Region 2 website, http://ifw2es.fws.gov/EndangeredSpecies/lists/, five species in Sandoval County are listed as endangered or threatened. Three of the species are avian and include the Bald eagle (*Haliaeetus leucocephalus*) and Mexican spotted owl (*Strix occidentalis lucida*); listed as threatened, and the Southwestern willow flycatcher (*Empidonax traillii extimus*), listed as endangered. The other two species are the Black-footed ferret (*Mustela nigripes*) and the Rio Grande silvery minnow (*Hybognathus amarus*), both listed as endangered.

After review, EPA has determined that the reissuance of Permit No. NM0030112 will have "no effect" on listed threatened and endangered species nor will adversely modify designated critical habitat. EPA makes this determination based on the following:

a. Permit limitations are at least as restrictive of the previously permit, issued December 20, 2004.

b. No changes have been made to the US Fish and Wildlife (USFWS) list of threatened and endangered species and critical habitat designation in the area of the discharge since prior issuance of the permit.

c. EPA concluded "no effect" during the previous issuance of the permit on December 20, 2004, and has received no additional information since then which would lead to revision of that "no effect" determination.

d. EPA determines that Items (a), (b), and (c) result in no change to the environmental baseline established by the previous permit, therefore, EPA concludes that reissuance of this permit will have "no effect" on listed species and designated critical habitat.

XVII. HISTORICAL and ARCHEOLOGICAL PRESERVATION CONSIDERATIONS

The issuance of the permit should have no impact on historical and/or archeological sites since there are no construction activities specified in the application.

XVIII. PERMIT REOPENER

The permit may be reopened and modified during the life of the permit if relevant portions of New Mexico's Water Quality Standards for Interstate and Intrastate Streams are revised or remanded by the New Mexico Water Quality Control Commission. In addition, the permit may be reopened and modified during the life of the permit if relevant procedures implementing the Water Quality Standards are either revised or promulgated by the New Mexico Environment Department. Should the State adopt a State water quality standard, and/or develop or amend a TMDL, this permit may be reopened to establish effluent limitations for the parameter(s) to be consistent with that approved State standard and/or water quality management plan, in accordance with [40 CFR 122.44(d)]. Modification of the permit is subject to the provisions of [40 CFR 124.5].

XIX. VARIANCE REQUESTS

No variance requests have been received.

XX. CERTIFICATION

The permit is in the process of certification by the State agency following regulations promulgated at [40 CFR 124.53]. A draft permit and draft public notice will be sent to the District Engineer, Corps of Engineers; to the Regional Director of the U.S. Fish and Wildlife Service and to the National Marine Fisheries Service prior to the publication of that notice.

XXI. FINAL DETERMINATION

The public notice describes the procedures for the formulation of final determinations.

XXII. ADMINISTRATIVE RECORD

The following information was used to develop the proposed permit:

A. Application(s)

EPA Application Form 2A received January 18, 2007.

B. 40 CFR Citations

Sections 122, 124, 125, 133, 136

C. State of New Mexico References

New Mexico State Standards for Interstate and Intrastate Surface Water, 20.6.4 NMAC, as amended through December 29, 2006.

Statewide Water Quality Management Plan, December 17, 2002.
Region 6 Implementation Guidance for State of New Mexico Standards for Interstate and Intrastate Stream, May 1995.

State of New Mexico 303(d) List for Assessed Stream and River Reaches, 2004 - 2006.

D. Miscellaneous References

EPA Region 6 "Policy for Post Third Round NPDES Permitting" and "Post Third Round NPDES Permit Implementation Strategy," October 1, 1992.

E-mail from Michael Green, DGF, to Larry Giglio, EPA, July 31, 2007, providing additional pollutant testing results for vanadium and nickel for Outfall 001 and the source water.